

Terms and Conditions – PURCHASE CONTRACT | February 2019

1. General

1.1 The following "Terms and Conditions – Purchase Contract", in here later referred to as "terms and conditions", apply to all purchase contracts between the Stell GmbH (Limited liability company), Raiffeisenring 35-37, 46395 Bocholt, Deutschland (in here later referred to as "seller") and enterprises according to § 14 BGB, legal bodies under public law and legal assets under public law (in here later referred to as "buyer").

1.2 Contradicting or differing terms and conditions of the buyer are no subject to the contract even if the seller is fulfilling the contract without having explicitly refused those terms. Differing terms only apply if explicitly agreed to by the seller in writing.

2. Contract proposal and conclusion, offers, orders

2.1 The offers of the seller are non-binding and shall be considered as a proposal towards the buyer to place a purchase order with the seller. The purchase contract (in here later referred to as "order") is concluded with the placement of the order by the buyer and the acceptance of the order by the seller. If the acceptance notice differs from the order, it is to be considered a new, non-binding offer of the seller.

2.2 By placing the order the buyer bindingly declares to willingly purchase the ordered products. The seller is entitled to accept the offer for the order within 2 weeks after the placement of the order. By placing the order, the buyer agrees to the present terms and conditions. The same applies to all future purchase orders even if the terms and conditions are not explicitly referred to.

2.3 The buyer is obligated to immediately revise the acceptance notice/ order confirmation of the seller. If no formal acceptance notice has been issued, the former applies also to instalments, partial or final accounts.

2.4 The granting of a certain property or suitability of the ordered product concerning a certain intended use as well as taking over a guarantee is only binding if confirmed by the seller in writing. The properties of patterns or samples are only binding as long as explicitly agreed to be properties of the product. 2.5 As far as the seller provides advice and support services, those are provided to the best of his/her knowledge.

3. Purchase price, payment, default, off-set, retention, transfer of claims

3.1 (a) All prices are ex office of the seller.

(b) Generally, the purchase price is excluding present statutory VAT as far as legal tax obligations apply. If the statutory VAT rate increases between the conclusion of the contract and the issuance of the invoice, the buyer has to pay the higher VAT rate.

(c) On deliveries within the EU, the buyer has to provide his/her VAT ID number used for his/her turnover taxation prior to the payment. For non-electronic order declarations concerning deliveries from the Federal Republic of Germany to countries outside of the EU which are not carried out or initiated by the seller, the buyer has to provide the export declaration necessary for taxation. If the export declaration is not provided, the buyer has to pay the VAT for the products in addition to the invoiced amount for deliveries within Germany.

(d) The seller is entitled to claim down payments according to the value of already performed partial deliveries.

3.2 If the agreed delivery term exceeds 4 months, the seller reserves the right to reasonably adapt the agreed purchase price according to changes of actual costs, including material costs and labor expenses as well as shipping costs if necessary. The same applies in case of increase of customs or fees required for deliveries at the seller's expense. If the price not proportionally increases compared to the consumer price index, the price increase will be limited to the market price. Paragraph 4.12 remains untouched.

3.3 The agreed purchase price is due within 7 days after the delivery of the product to the buyer without deductions, unless otherwise agreed upon. The same applies to partial deliveries. Trade discounts may only be deducted if the payment has been credited to the seller's account in due time and if the buyer is not in default with other claims of the seller at the time of the respective payment. Trade discounts may only be deducted from the net price.

3.4 Drafts and checks will only be accepted on account of performance and upon explicit agreement. They will not be considered as payment until they are encashed. Draft charges and taxes are at the buyer's expense after the expiry of the agreed payment term.

3.5 The buyer defaults in payment after the expiry of the 7th day after the delivery of the product, latest after expiry of the last day of an individually granted payment period.

3.6(a) The buyer may only off-set against claims of the seller with undisputed, final and absolute counter claims.

(b) Letter (a) respectively applies to the execution of retention rights by the buyer.

3.7 The buyer is not entitled to retain claims of the seller resulting from this contract due to unsettled claims not subject to this contract.

3.8 The buyer's right to lien according to § 369 HGB does not apply.

3.9 If there are reasonable doubts concerning the liquidity or credit status of the buyer and if the buyer is not willing to pay in advance or provide a suitable financial security on demand of the seller, the seller is entitled, if he/she has not performed yet, to demand an advanced cash payment before a possible further/subsequent delivery. This particularly applies to agreed, but not yet carried-out subsequent business transactions.

3.10 The seller reserves the right to use payments to settle the oldest open account item plus incurred default interests according to the following order: costs, interests, principle claim.

3.11 The seller is entitled to transfer claims resulting from or in relation to this purchase contract. The buyer may not transfer his claim against the seller to third parties. § 354a HGB remains unchanged.

3.12 On default of payment of remuneration claims, the seller is entitled to claim default interest of 8 %-points above the basic interest rate according to § 247 BGB valid at the time of default occurrence. § 352 HGB as well as claims towards further actual default damages remain unchanged, so do legal rights to claim damages for the failure of performance as well as withdrawal from the contract.

3.13 On default, all claims resulting from all contract relationships of the parties are due immediately, unless the default is related to only minor claims.

4. Delivery, transfer of risk

4.1 If no explicit delivery term has been stated by the seller, the delivery may be claimed not until 8 weeks after the conclusion of the contract. An agreed approximate delivery term does not begin until receipt of all necessary documentations and information to be handed in by the buyer (P&IDs, specifications, production lists, approval of layouts).

4.2 If the buyer has been granted a certain delivery period, this period is to be considered as complied with if the product to be delivered has been delivered to the customer. If the purchase contract consists of several partial deliveries, the acceptance has to take place according to the agreed delivery intervals.

4.3 If not otherwise agreed upon, the products are provided for delivery at the seller's place of business. On collection from the delivery point the collection has to take place by the buyer or his/her representatives according to legal regulations concerning secure loading of vehicles.

4.4 If a dispatch of products has been agreed upon, the seller dispatches the products on request of the buyer according to § 447 BGB at the buyer's risk and expense.

4.5 If employees of the seller support the loading of vehicles according to paragraphs 4.3, 4.4 outside the scope of agreed services on request of the buyer, they solely act on behalf of the buyer.

4.6 (a) The risk transfers latest on handing over the product to the forwarding/collecting agent according to paragraph 4.3, also in the event of partial deliveries or if the seller has taken over additional services, such as dispatch or direct delivery of the products. On request of the buyer, the shipment will be insured against theft, physical, fire or water damages and other insurable risks by the seller acting as a mediator only.

(b) If the buyer defaults in acceptance, the seller is entitled to store the products without further notice/reminders at the buyer's expense and risk.

(c) If the buyer defaults in acceptance, the purchase price is due immediately.

4.7 Partial deliveries by the seller are accepted, if reasonable to the buyer under consideration of the interest of both parties.

4.8 The acceptance of the shipment without objections by the forwarding/collecting agent is to be considered proof of intact packaging and correct loading, unless the buyer proves that the packaging was damaged or the loading did not take place correctly on handing over the shipment to the forwarding/collecting agent. Complaints due to transport damages are to be reported immediately to the company in charge of the shipment with a copy to the seller.

4.9 If the parties use INCOTERMS clauses for an individual purchase contract, those terms apply in the version valid at the time of concluding the contract. Possible contradictions with other terms of paragraph 4 of this agreement are overruled by the agreed INCOTERMS regulations.

4.10 The buyer is responsible for the compliance with legal and official regulations concerning import, delivery, storage and use of the services and deliveries performed by the seller in the country or place of destination as well as in the transit countries as well as responsible for the acquisition of required import and transit documents (custom etc.) as long as those are not exclusively to be provided by the seller due to legal reasons.

4.11 All deliveries are subject to correct and due supply of the seller.

4.12 If it has been exceptionally agreed upon that the seller is to bear custom or export/import costs of the country of origin/destination or of transit countries, the cost-increase occurring in between the time of the acceptance of order and delivery of the contractual products transfers to the buyer.

5. Reservation of title

5.1 Products remain property of the seller until complete payment of all receivables resulting from the business relationship with the buyer are settled.

5.2 The reservation of title also persists if single claims of the seller are added to a running account and the account is balanced and confirmed.

5.3 The return of reserved products does only represent a withdrawal from the contract, if explicitly declared by the seller in writing. If the seller withdraws from the contract, he/she may claim a reasonable compensation for the duration the products were in possession of and in use by the buyer.

5.4 (a) The buyer is entitled to use the products owned by the seller in the usual course of business as long as he/she complies with his/her duties resulting from the business relationship with the seller. Not included in the usual course of business is the transfer of claims concerning the purchase price from the buyer to his customer(s): in particular: pawning, mortgage or other encumbrances of the products are prohibited.

(b) All claims of the buyer resulting from the resale of products owned by the seller are already by now transferred to the seller for security reasons, if applicable in the amount of the co-ownership share. Confirmed receivables resulting from current account agreements the buyer already transfer to the seller at the time of concluding the contract with the seller in the amount of accounts receivables. If the buyer defaults in payment, the seller is entitled to claim the interim return of the products owned by the seller even without withdrawing from the contract and setting an additional grace period at the buyer's expense.

(c) In the event of processing of products owned by the seller, the seller is to be considered the manufacturer and gains a co-ownership proportionally to the invoiced value of his own products.

(d) If the product of the buyer is to be considered the final product in the event of attaching or blending of products owned by the seller with goods of the buyer, the co-ownership of the product transfers to the seller in the amount of the invoiced value of his/her own product or the current market value of the final product, if an invoiced value is not existent. In these cases the buyer is to be considered the custodian of the product.

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5.5 In the event of resale of products owned by the seller, the buyer is obligated to arrange regulations concerning the reservation of title with his customers without revealing the original reservation of title agreed upon with the seller. (Secondary reservation of title) 5.6 If the seller has reasonable concerns that the buyer is not fulfilling or will not fulfill his/her duties towards the seller, the buyer is to order his/her customers on demand of the seller to abstain from demands to receiving information about the stock of seller-owned products and receivables transferred to the seller as well as to being handed out documents to enforce transferred receivables. The same applies in case of withdrawal of the direct debit authorization. Access to reserved products by third parties and transferred receivables is to be announced immediately.

5.7 If the security value exceeds the claims of the seller by more than 10 %, the seller will release securities on the buyer's request.

6. Warranty, Guarantee

6.1 If not individually agreed upon, the seller delivers the product according to the terms stated in the regular product description (catalogues etc.), otherwise according to standard quality. Additional properties of the product to be purchased stated in other publications or advertisements of the seller or his/her suppliers/manufacturers may not be derived by the buyer unless the seller has confirmed those additional properties in writing. Guarantees require an explicit written confirmation by the company management of the seller.

6.2 Subject to compliance with inspection and objection obligations of the buyer according to Section 377 German Commercial Code (HGB) in connection with paragraph 6.3 of this agreement, the seller may choose to compensate for defective products between rectification of the defect or new delivery. The seller reserves the right of two rectification attempts. The seller is entitled to reject the chosen rectification method if rectification would result in unproportionally high costs and the other method of rectification is possible without significant disadvantages for the buyer. If the rectification fails, the buyer is entitled either to claim a reduction of the purchase price or to withdraw from the contract. The right of the buyer to legally claim compensation for damages or necessary expenses according to the law, in addition to withdrawing from the contract, remains unchallenged, except the limitations for claims of the buyer according to paragraph 7 of this agreement.

6.3 The defect notice according to Section 377 German Commercial Code (HGB) may only be issued by the buyer in writing. Further legal requirements according to Section 377 German Commercial Code (HGB) remain unchallenged. Regardless of that, guarantee claims of the buyer are excluded if the buyer fails to report obvious defects in writing within one week from the date of delivery until dispatch of the written defect notice.

6.4 The delivery of defect-free product for the purpose of rectification generally takes place only in exchange to the return of the defective product.

7. Liability

In cases of contractual or non-contractual liability, the seller compensates for damages or lost expenses according to the following regulations:

7.1 The seller is liable to the full amount in cases of intent or gross negligence.

7.2 On lack of a property for whose existence the seller has taken over a guarantee or which has been assured to the buyer, the seller is liable for the typical, foreseeable damage which was supposed to be prevented through the guarantee or assurance as long as the lack of the guaranteed/assured property was caused by intent or gross negligence.

7.3 In case of light negligent violation of essential contractual obligations (cardinal obligations), the liability of the seller is limited to the compensation for the typical, foreseeable damage; in case of light violation of non-cardinal obligations, liability of the seller is excluded.

7.4 The above mentioned limitations of liability do not apply to claims of the buyer under the Product Liability Act and resulting from harm to life, body and health caused by the seller.

7.5 Other legal obligations concerning compensation or exclusion of liability, such as Section 281, paragraph 1, sentence 3 German Civil Code (BGB) remain unchanged.

8. Force Majeure

In case of events or circumstances, such as natural events, war, labor disputes, raw material and energy shortage, traffic and facilities disturbances, fire and explosion damages, orders of higher authorities whose occurrence are outside the sphere of influence of the seller, even under consideration of careful commercial planning and precaution, and which impair the availability of products from the source from which the seller is supplied so that the seller is not able to fulfill his/her contractual duties (under partial consideration of other internal and external delivery obligations), the seller is (i) relieved from his/her contractual duties for the duration and extend of the disturbance and (ii) is not obligated to obtain the products from third parties. Sentence 1 also applies as long as the events and circumstances make the execution of the respective business sustainably uneconomic for the seller or influence the seller's suppliers. If those events last longer than 3 months the seller is entitled to withdraw from the contract.

9. Confidentiality, data protection

9.1 The parties agree to treat all confidential information and industrial secrets of the other party collected within the scope of execution of the contract confidentially without temporal limits and to use them only within the scope of executing the contract.

9.2 Both parties comply with data protection regulations. The handling of the business relationship will be supported by a data processing system of the seller, thus data of the buyer will be automatically collected and stored. The buyer will be informed about the storage of his/her data.

10. Industrial property rights

10.1 The buyer is responsible that property rights of third parties are not violated by the seller receiving and using materials of the buyer, such as documentations, data, drafts, plans or other execution instructions provided by the buyer necessary for the execution of the contract, and releases the seller from all related claims. The buyer bears license fees or costs resulting from the avoidance of such violations of property rights.

10.2 If industrial property rights occur within the scope of the execution of contractual agreements, the buyer is to transfer those rights to the seller if legally possible. If the full transfer of rights is not possible, the buyer grants the seller an exclusive, over-all usage right, unlimited in time and space or, if even this is not possible, a non-exclusive right. Legal regulations which grant the buyer a reasonable compensation for the transfer of rights remain unchallenged.

10.3 The buyer has no property rights towards films, plans, drawings and graphics compiled in the course of the preparation of purchase product. In particular, industrial property rights on those as well as on the contractual products remain with the seller. By full payment of the remuneration, the buyer gains the ownership on the delivered products.

10.4 The seller is entitled to perform or deliver products to third parties, comparable to the products delivered to or compiled for the buyer, in particular films, plans, drawings and graphics. The seller is entitled to attach an adequate copyright label or label of origin to all contractual products.

10.5 The seller is entitled to use the purchase of products delivered to the buyer within reason for own advertising and promotion purposes in any form, such as illustrations of products and the place of use at the buyer's facilities in brochures or electronic media. This right does only not apply if the buyer explicitly disagrees to such use by the time of his/her declaration of intent towards concluding the contract.

11. Place of execution, place of jurisdiction, choice of law, severability clause, written form

11.1 Place of payments by the buyer is the company residence of the seller.

11.2 (a) Place of jurisdiction for all claims resulting from or in relation to the respective purchase contract, concerning its conclusion, its effectiveness and execution is the usual place of jurisdiction of the seller or, on request of the seller, the usual place of jurisdiction of the buyer.

(b) If the buyer has his/her residence outside of the EU, all law suits resulting from or in relation to the respective purchase contract, concerning its conclusion, its effectiveness and execution are carried out according to the arbitration regulations of the German Institution for Arbitration (DIS) under exclusion of the legal recourse. Decisions are made by a single arbitrator who has to have a qualification to judgements and is appointed according to Section 14 of the German DIS Arbitration Code. The place of arbitration is the place of residence of the seller. The language of arbitration is German. The gathering of evidence takes place under application of the valid regulations of the German Civil Code concerning the gathering of evidence.

11.3 German law is applied under exclusion of CISG law (United Nations Convention on Contracts for the International Sale of Goods) as well as the referral regulations of the German International Civil Law.

11.4 If single regulations of these terms of service are entirely or partially invalid or have legal gaps, the effectiveness of other regulations or parts of regulations remains unchallenged.

11.5 The German version of these terms of service is legally determinative. The publication of a version in another language takes only place for the purpose of easier comprehension.